

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARINA RAKHMAN, as Administratrix
of the Estate of INNA PANTAYLOR,
and MARINA RAKHMAN, Individually,
Plaintiffs,

CIVIL ACTION NO. 20-cv-10135

v.

AMAZON.COM, LLC
Defendant.

Defendant, Amazon.com Services, LLC (improperly pleaded as Amazon.com LLC) (hereinafter “Amazon”), by and through its undersigned counsel, hereby responds to the Complaint of Plaintiffs Marina Rakhman, as Administratrix of the Estate of Inna Pantaylor, and Marina Rakhman, Individually (“Plaintiffs”) as follows:

1. The statements contained in Paragraph 1 of Plaintiffs’ Amended Complaint are not allegations of fact and, therefore, no response is required. To the extent that the statements are deemed to plead facts relating to Amazon, they are denied.
2. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 2 of Plaintiffs’ Amended Complaint and therefore denies the same.
3. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph

3 of Plaintiffs' Amended Complaint and therefore denies the same.

4. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 4 of Plaintiffs' Amended Complaint and therefore denies the same.

5. Amazon denies the allegations in Paragraph 5 of Plaintiffs' Amended Complaint.

6. Amazon denies the allegations in Paragraph 6 of Plaintiffs' Amended Complaint.

7. Amazon denies the allegations in Paragraph 7 of Plaintiffs' Amended Complaint.

8. Amazon denies the allegations in Paragraph 8 of Plaintiffs' Amended Complaint.

9. After reasonable investigation, Amazon admits only that an "Indian Cotton Blue Patik Paisley Floral Boho Long Caftan" was bought from third-party seller Handi-Craft Palace using Amazon.com on April 18, 2019. Amazon denies that it sold the dress and denies all other allegations of Paragraph 9 of Plaintiffs' Amended Complaint.

10. After reasonable investigation, Amazon admits only that an "Indian Cotton Blue Patik Paisley Floral Boho Long Caftan" was bought from third-party seller Handi-Craft Palace using Amazon.com on April 18, 2019. Amazon denies that

it sold the dress and denies all other allegations of Paragraph 10 of Plaintiffs' Amended Complaint.

11. Amazon denies the allegations contained in Paragraph 11 of Plaintiffs' Amended Complaint and demands strict proof at trial.

12. Amazon denies the allegations contained in Paragraph 12 of Plaintiffs' Amended Complaint and demands strict proof at trial.

13. After reasonable investigation, Amazon admits only that an Amazon entity processes payment for transactions on Amazon.com. Amazon denies all other allegations in Paragraph 13 of Plaintiffs' Amended Complaint.

14. Amazon admits only that third-party sellers must assent to the Business Solutions Agreement to sell products on Amazon.com. Amazon denies all other allegations in Paragraph 14 of Plaintiffs' Amended Complaint.

15. Amazon admits only that third-party sellers must assent to the Business Solutions Agreement to sell products on Amazon.com. Amazon denies all other allegations in Paragraph 15 of Plaintiffs' Amended Complaint.

16. Paragraph 16 of Plaintiffs' Amended Complaint contains an incomplete sentence and therefore, Amazon is incapable of responding to the same.

17. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 17 of Plaintiffs' Amended Complaint and therefore denies the same.

18. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 18 of Plaintiffs' Amended Complaint and therefore denies the same.

19. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 19 of Plaintiffs' Amended Complaint and therefore denies the same.

20. Amazon admits only that it provides a communications tool for buyers and sellers to communicate. Amazon denies that it controls the content of those communications and denies all other allegations in Paragraph 20 of Plaintiffs' Amended Complaint.

21. Amazon admits only that the Business Solutions Agreement that all third-party sellers must assent to contains an indemnity provision, and that Agreement speaks for itself. Amazon denies all other allegations in Paragraph 21 of Plaintiff's Amended Complaint.

22. Amazon admits only that it charges third-party sellers service fees. Amazon denies all other allegations in Paragraph 22 of Plaintiff's Amended Complaint.

23. Amazon denies the allegations contained in Paragraph 23 of Plaintiffs' Amended Complaint and demands strict proof at trial.

24. After reasonable investigation, Amazon lacks sufficient knowledge

and information to admit or deny the truth of the allegations contained in Paragraph 24 of Plaintiffs' Amended Complaint and therefore denies the same.

25. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 25 of Plaintiffs' Amended Complaint and therefore denies the same.

26. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 26 of Plaintiffs' Amended Complaint and therefore denies the same.

27. After reasonable investigation, Amazon lacks sufficient knowledge and information to admit or deny the truth of the allegations contained in Paragraph 27 of Plaintiffs' Amended Complaint and therefore denies the same.

28. Amazon denies the allegations contained in Paragraph 28 of Plaintiffs' Amended Complaint and demands strict proof at trial.

29. Amazon denies the allegations contained in Paragraph 29 of Plaintiffs' Amended Complaint and demands strict proof at trial.

30. Amazon denies the allegations contained in Paragraph 30 of Plaintiffs' Amended Complaint and demands strict proof at trial.

31. Amazon denies the allegations contained in Paragraph 31 of Plaintiffs' Amended Complaint and demands strict proof at trial.

32. Amazon denies the allegations contained in Paragraph 32 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

33. Amazon denies the allegations contained in Paragraph 33 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

34. Amazon denies the allegations contained in Paragraph 34 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

35. Amazon denies the allegations contained in Paragraph 35 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

36. Amazon denies the allegations contained in Paragraph 36 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

37. Amazon denies the allegations contained in Paragraph 37 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

38. Amazon denies the allegations contained in Paragraph 38 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

39. Amazon denies the allegations contained in Paragraph 39 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

40. Amazon denies the allegations contained in Paragraph 40 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

41. Amazon denies the allegations contained in Paragraph 41 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

42. Amazon denies the allegations contained in Paragraph 42 of Plaintiffs'

Amended Complaint and demands strict proof at trial.

43. Amazon denies the allegations contained in Paragraph 43 of Plaintiffs’

Amended Complaint and demands strict proof at trial.

44. Amazon denies the allegations contained in Paragraph 44 of Plaintiffs’

Amended Complaint and demands strict proof thereof at trial.

45. Amazon denies the allegations contained in Paragraph 45 of Plaintiffs’

Amended Complaint and demands strict proof at trial.

COUNT I – STRICT LIABILITY

46. Amazon incorporates by reference its responses to Paragraphs 1 through 45 of Plaintiffs’ Amended Complaint as if fully stated herein.

47. Amazon denies the allegations contained in Paragraph 47 of Plaintiffs’

Amended Complaint and demands strict proof thereof at trial.

48. Amazon denies the allegations contained in Paragraph 48 of Plaintiffs’

Amended Complaint and demands strict proof thereof at trial.

49. Amazon denies the allegations contained in Paragraph 49 of Plaintiffs’

Amended Complaint and demands strict proof thereof at trial.

50. Amazon denies the allegations contained in Paragraph 50 of Plaintiffs’

Amended Complaint and demands strict proof thereof at trial.

51. Amazon denies the allegations contained in Paragraph 51 of Plaintiffs’

Amended Complaint and demands strict proof thereof at trial.

52. Amazon denies the allegations contained in Paragraph 52 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

53. Amazon denies the allegations contained in Paragraph 53 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

54. Amazon denies the allegations contained in Paragraph 54 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

55. Amazon denies the allegations contained in Paragraph 55 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

56. Amazon denies the allegations contained in Paragraph 56 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

57. Amazon denies the allegations contained in Paragraph 57 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

58. Amazon denies the allegations contained in Paragraph 58 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

59. Amazon denies the allegations contained in Paragraph 59 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

60. Amazon denies the allegations contained in Paragraph 60 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

COUNT II – NEGLIGENCE

61. Amazon incorporates by reference its responses to Paragraphs 1

through 60 of Plaintiffs' Amended Complaint as if fully stated herein.

62. Amazon denies the allegations contained in Paragraph 62 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

63. Amazon denies the allegations contained in Paragraph 63 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

COUNT III – BREACH OF IMPLIED WARRANTY

64. Amazon incorporates by reference its responses to Paragraphs 1 through 63 of Plaintiffs' Amended Complaint as if fully stated herein.

65. Amazon denies the allegations contained in Paragraph 65 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

66. Amazon denies the allegations contained in Paragraph 66 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

67. Amazon denies the allegations contained in Paragraph 67 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

68. Amazon denies the allegations contained in Paragraph 68 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

69. Amazon denies the allegations contained in Paragraph 69 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

70. Amazon denies the allegations contained in Paragraph 70 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

71. Amazon denies the allegations contained in Paragraph 71 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

COUNT IV – BREACH OF EXPRESS WARRANTY

72. Amazon incorporates by reference its responses to Paragraphs 1 through 71 of Plaintiffs' Amended Complaint as if fully stated herein.

73. Amazon denies the allegations contained in Paragraph 73 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

74. Amazon denies the allegations contained in Paragraph 74 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

75. Amazon denies the allegations contained in Paragraph 75 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

76. Amazon denies the allegations contained in Paragraph 76 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

77. Amazon denies the allegations contained in Paragraph 77 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

78. Amazon denies the allegations contained in Paragraph 78 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

79. Amazon denies the allegations contained in Paragraph 79 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

80. Amazon denies the allegations contained in Paragraph 80 of Plaintiffs'

Amended Complaint and demands strict proof thereof at trial.

COUNT V – FAILURE TO WARN

81. Amazon incorporates by reference its responses to Paragraphs 1 through 80 of Plaintiffs' Amended Complaint as if fully stated herein.

82. Amazon denies the allegations contained in Paragraph 82 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

83. Amazon denies the allegations contained in Paragraph 83 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

84. Amazon denies the allegations contained in Paragraph 84 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

COUNT VI – WRONGFUL DEATH

85. Amazon incorporates by reference its responses to Paragraphs 1 through 84 of Plaintiffs' Amended Complaint as if fully stated herein.

86. Amazon denies the allegations contained in Paragraph 86 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

87. Amazon denies the allegations contained in Paragraph 87 of Plaintiffs' Amended Complaint and demands strict proof thereof at trial.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Amended Complaint fails to set forth a claim upon which relief may be granted.

2. The superseding negligence of parties and/or entities over which Amazon had no control or right of control and for those whose conduct Amazon bears no responsibility contributed, in whole or in part, to any harm incurred, all such harm being otherwise denied.

3. The product described in Plaintiffs' Amended Complaint may have been improperly maintained and such improper maintenance, as may be demonstrated through subsequent discovery, may be demonstrated to have been the cause of the accident described in the Amended Complaint.

4. Plaintiffs' claims are barred in the event that the product underwent a substantial change and/or alteration by persons or parties beyond Amazon's control. Decedent and/or third persons or entities over whom Amazon had no control or right of control may have altered, modified and/or misused the product described in Plaintiffs' Amended Complaint and/or engaged in highly reckless conduct thereby constituting the sole or superseding cause of the alleged damages, all such damages being otherwise denied.

5. No act, or omission, or other liability producing conduct on the part of Amazon is a factual and/or legal cause of Plaintiffs' alleged injuries and/or damages, all such injuries and/or damages being otherwise denied.

6. The alleged injuries and damages described in the Amended Complaint, all such injuries and/or damages being otherwise denied, were not the result of any

act or omission on the part of Amazon nor the result of any breach of duty, if any, owed by Amazon.

7. Amazon does not owe, nor has it owed or breached, any alleged duties to Plaintiffs or Decedent, including, without limitation, any duty of reasonable care.

8. Recovery is barred because of the abnormal use and/or unintended use and/or misuse of the product.

9. Plaintiffs' claims against Amazon, to the extent they are based on third-party content, are barred and prohibited by the Communications Decency Act, 42 U.S.C. § 230.

10. Amazon is not liable to Plaintiffs because Amazon did not manufacture, sell, supply, or distribute a dangerous or defective product and had neither actual nor constructive notice of any alleged dangerous or defective product, all allegations of any alleged defect and/or dangerous product being otherwise specifically denied.

11. Amazon is not liable to Plaintiffs because any alleged dangerous and/or defective condition, as described in the Amended Complaint, was not within Amazon's actual and/or constructive control, all allegations of any alleged defect and/or dangerous product being otherwise specifically denied.

12. To the extent that any person may have failed to preserve valuable evidence to Amazon's prejudice, the claims and causes of action against Amazon may be dismissed.

13. Plaintiffs failed to provide Amazon timely notice of any alleged defect, breach of warranty, or other claim.

14. To the extent that the products described in Plaintiffs' Amended Complaint were sold with a disclaimer of warranties, Amazon pleads such disclaimer as a complete defense to Plaintiffs' claims.

15. To the extent that the products described in Plaintiffs' Amended Complaint were sold with a limitation of warranties, Amazon pleads such limitation as a complete defense to Plaintiffs' claims.

16. Amazon was not the "seller" of the products described in Plaintiffs' Amended Complaint.

17. The third-party seller of the products described in Plaintiffs' Amended Complaint decided all content that corresponded with the listing of its product.

18. Plaintiffs' claims for damages may be barred or reduced by the percentage of comparative fault and/or contributory negligence of Decedent.

19. Amazon claims the benefit of any collateral sources to which Plaintiffs are, or may be, entitled in connection with the alleged losses for which recovery is sought in this action and requests that in the event Plaintiffs recover any judgment herein, that said judgment be reduced by any amounts that have been or may be recovered in whole or in part from collateral sources.

20. Amazon denies any negligence on its part was a proximate cause of the injuries alleged in the Amended Complaint. If Plaintiffs sustained any damages in the manner set forth in the Amended Complaint through any carelessness, reckless, or negligence other than their own, such damages were sustained by reason of the sole active and primary carelessness, recklessness or affirmative acts or omissions of third parties, without any active or affirmative negligence on the part of Amazon contributing thereto. By reason of the foregoing, said third parties will be liable to Amazon, under the doctrines of apportionment, contribution and common law and contractual indemnification for the full amount of any verdict and judgment, or for such proportionate share as represents the full amount, degree or kind of negligence attributable to the third-party tortfeasor pursuant to Article 14 of the Civil Practice Law and Rules, that Plaintiffs may recover against Amazon, including, but not limited to, the costs of investigation and attorneys' fees and disbursements incurred in the defense of this action and the prosecution of any claims by Amazon against said third parties.

21. The product described in Plaintiffs' Amended Complaint reasonably fit, suitable and safe for its intended use.

WHEREFORE, Defendant, Amazon.com Services, LLC's (improperly pleaded as Amazon.com LLC), by counsel, denies that Plaintiffs are entitled to judgment or to any of the relief sought, and respectfully requests that judgment be

entered in its favor and against Plaintiffs on all counts set forth in the Complaint, and that Amazon be awarded its costs incurred in defending this action, along with such other relief as this Court deems equitable and just.

Dated: December 9, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day, December 9, 2020, filed the Defendant, Amazon.com Services, LLC's (improperly pleaded as Amazon.com LLC) Answer with Affirmative Defenses VIA ECF and forwarded *via* US Mail:

For Plaintiffs	
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